

Application Serial No. 10/751,579
Amendment dated August 11, 2008
Reply to Office Action mailed June 18, 2007
Docket: 2517DIV2CON (203-3449DIV2CON)

REMARKS/ARGUMENTS

The above-identified application has been reviewed in light of the Office Action mailed on June 18, 2007. By the present amendment, the applicants have amended claim 63 and added new claim 71. It is respectfully submitted that the pending claims, in the application, are fully supported by the specification, introduce no new matter, and are patentable over the cited references of record.

In the Office Action, claim 63-70 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action asserted that claim 63 contained subject matter that was not described in the specification in a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification discloses, at least in paragraph 42, that "[t]he magazine 28, as will be described more fully below, contains the magazine passage 30 and one or more blood vessel clips 2 therein." Accordingly, Applicant respectfully submits that the recitation of "the magazine passage adapted for storing at least one blood vessel clip therein" in claim 63 is fully supported by the specification and in compliance with the requirements of 35 U.S.C. § 112, first paragraph, and respectfully requests withdrawal of the rejection of claims 63-70 under 35 U.S.C. § 112, first paragraph.

In the Office Action, claim 63 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,792,149 to Sherts et al. (Sherts). The Office Action stated that Sherts discloses a magazine 22 connects to the applicator barrel, the magazine has a plunger space at 46 and a passage which separated by a divider shim at 32, where a distal end of the magazine

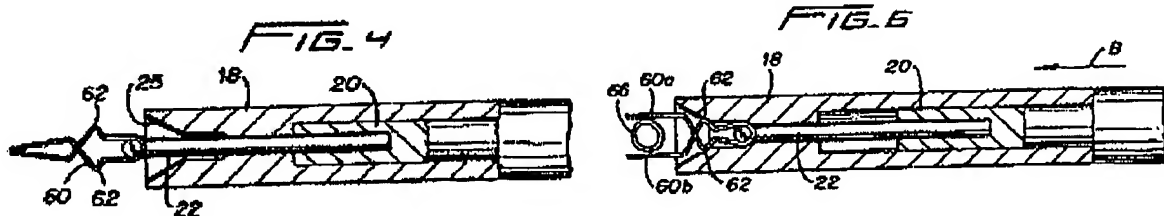
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defines an exit aperture at end 25, the magazine passage adapted for storing the blood vessel clip therein.

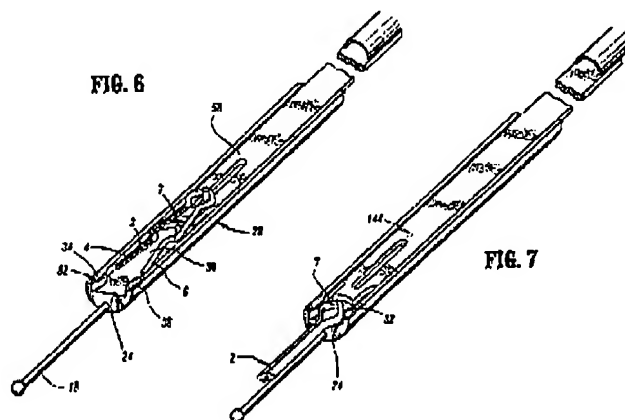
Sherts is directed to a clamp applicator configured to retain a single clamp and force the clamp from a closed position into an open position as the actuating member 24 and actuating sleeve 18 are moved to a distal position and proximal position, respectively. To open the clamp, the actuating member 24 and actuating sleeve 18 are moved to "an advanced position in which the distal end 25 of actuating sleeve 18 engages a pair of cam surfaces 62 on clamp 60 to force legs or jaws 60a and 60b of clamp 60 to an open position. That is, as cam surfaces 62 are forced toward each other, the legs or jaws 60a and 60b are spread apart," (col. 4, lns. 58-63). "[T]o close clamp 60 about body tissue 66, engagement member 54 is pressed downwardly [...] to move locking member 53 from engagement with locking surface 50 and allow biasing member 26 to move actuation member 24 proximally. Proximal movement of actuating member 24 retracts actuating sleeve 18 to disengage the distal end of actuating sleeve 18 from cam surfaces 62 to enable legs 60a and 60b of clamp 60 to return to their normally closed position," (col. 5, lns. 7-16), as illustrated in Sherts FIGS 4 and 6 below.



In contrast thereto, claim 63, as amended, recites an apparatus for applying a blood vessel clip including, *inter alia*, "the plunger operably connected to the grip assembly and adapted to move the at least one blood vessel clip distally through the constricted region and the exit aperture," see currently presented FIGS 6 and 7 below. Thus, it is respectively submitted that the

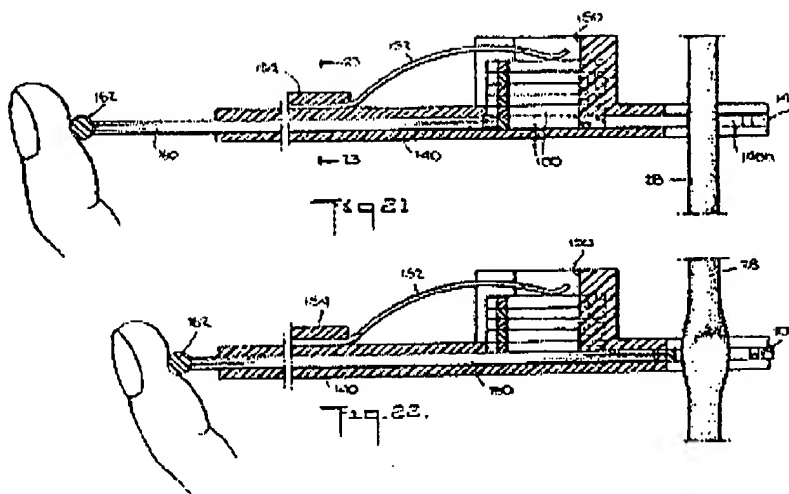
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apparatus claimed in independent claim 63 is patentably distinguished over the Sherts. Claims 64-70, which depend directly from independent claim 63, respectively, are also believed to be patentable over Sherts for at least the reasons given above with respect to independent claim 63.



The Office Action reject claims 64-70 under 35 U.S.C. §103(a) as being unpatentable over Sherts in view of U.S. Patent No. 4,934,364 to Green (Green). According to the Office Action, Sherts discloses most of the claimed features, but fails to disclose the barrel includes first and second pins which at least one pin is attached to the distal end of the barrel. The Office Action relies on Green to disclose at least one pin attached to the distal end of the barrel (FIG. 21, 22 element 160), as shown below.

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The applicants respectfully disagree and traverse the rejection of the Office Action for the following reasons.

As discussed in detail hereinabove, Sherts fails to anticipate or suggest the apparatus recited in amended claim 63. Adding the mischaracterized thumb ring 160 of Green fails to cure the deficiencies of Sherts. Therefore, Sherts in view of Green fail to suggest the apparatus recited in amended claim 63. Since claims 64-70 depend from independent claim 63, it is respectfully submitted that the rejection of the Office Action has been overcome and that claims 64-70 are in condition for allowance.

The applicants have added new claim 71. As discussed in detail hereinabove, none of the references cited in the Office Action disclose or suggest the apparatus recited in independent claim 63. Since new claim 71 depends from claim 63, it is respectfully submitted that new claim 71 is in condition for allowance.

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Prompt and favorable action on the above-identified application is earnestly requested.

Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefore.

Respectfully submitted,


Dana A. Brussel
Reg. No. 45,717
Attorney for Applicants

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
Tel.: (631) 501-5713
Fax: (631) 501-3526

Send correspondence to:
Chief Patent Counsel
Covidien
60 Middletown Avenue
North Haven, Connecticut 06473